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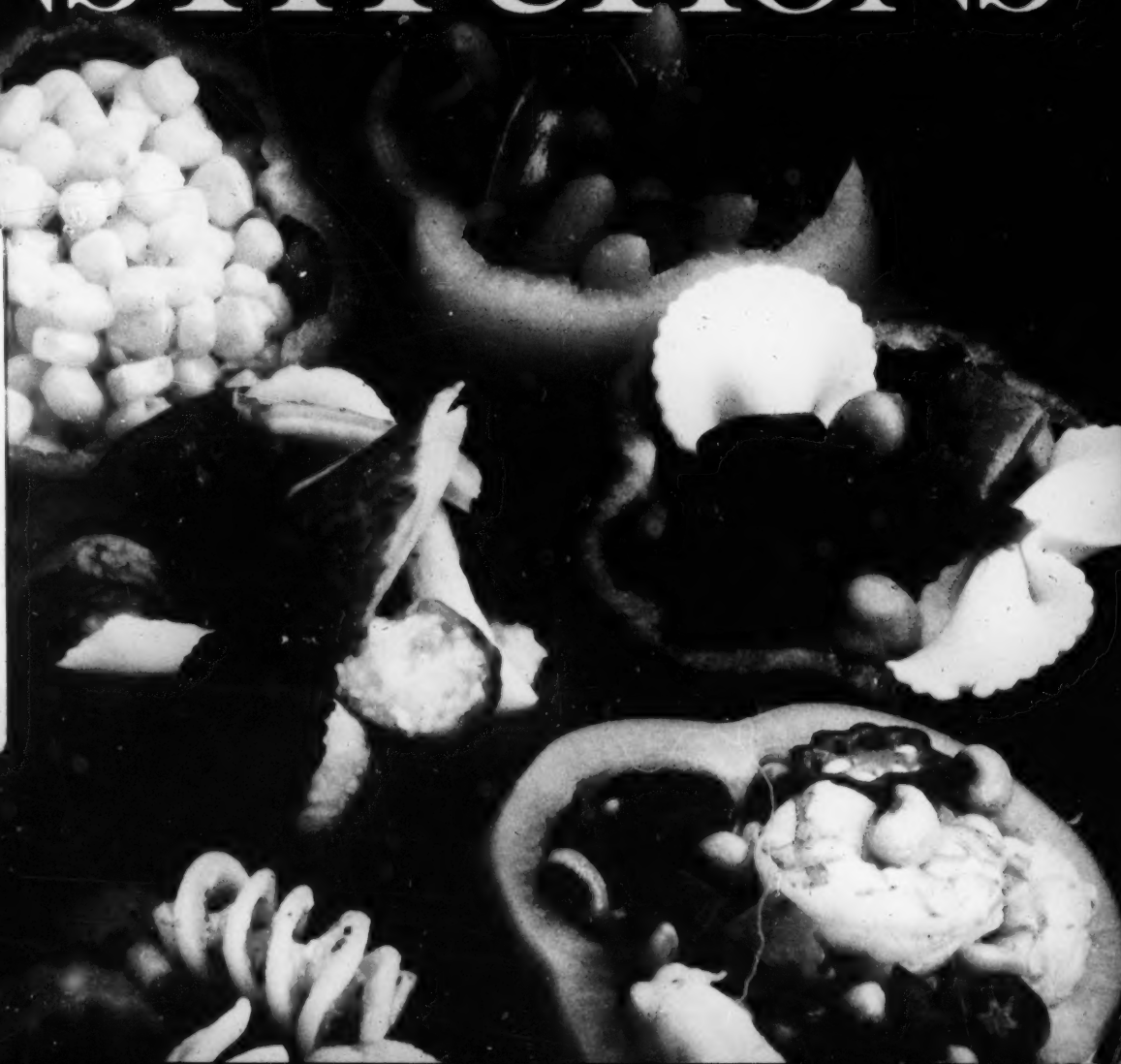
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R&I REPORT

■ LEGISLATION

Latest Burden: Plant Closing

Sixty-day advance notice requirement will become self-fulfilling prophecy.



The plant-closing bill will force restaurants to give 60 days' advance notice of closings or large layoffs.

Many industry leaders wonder, "Why bother?" If operators are required to announce a restaurant's closing 60 days in advance, they might as well shut the doors right then and there.

The latest mandate coming out of Washington, D.C., will require businesses with 100 or more workers to give 60 days' advance notice of impending closings or layoffs of 50 or more employees.

The measure was part of the trade bill until June, when President Reagan vetoed it because he felt the plant-closing provision would hamstring business and discourage the creation of new jobs. Sen. Howard Metzenbaum (D-Ohio) introduced separate plant-closing legislation shortly thereafter, and with the help of pro-labor forces, is expected to override a presidential veto the second time around. GOP amendments that would have tempered the legislation, deleting the requirement for advance notice in the event of layoffs and allowing employers to give severance pay in lieu of notice, were defeated.

As a result, operators of larger establishments will have more difficulty making a last-ditch effort to turn around a sagging business. Every employer hopes tomorrow will be better than yesterday, but they may not be able to make that prediction 60 days in advance.

"The bill is great if you have the clairvoyance to know if you're going out of business in 60 days," says New York Restaurant Association President Fred Sampson. "But that is not the way things work in this business. If you have to give 60 days' notice, you will frighten away creditors and suppliers and will not be able to keep employees."

Proponents of the legisla-

tion cite a report issued by the Bureau of Labor Statistics that shows half of the 11.5 million workers displaced between 1979 and 1983 lost their jobs in plant closings and half in work-force reductions. This displaced group was surveyed in 1984 and 40% were still jobless. Of the 60% who did find work, less than half were earning as much as they had in their previous jobs.

But New York City restaurateur Michael Weinstein

"If you have to give 60 days' notice, you will frighten away creditors and suppliers."

says that while labor statistics justify legislation to counteract moves made by some industries, it is totally inappropriate for the restaurant industry.

"Waiters, waitresses and back-of-the-house employees will quickly find another position, whereas auto plant workers may not," says Weinstein. "Waiters are in demand in this expanding service environment and are not looking for \$20 an hour . . . This legislation will create restaurant operations that will not be able to function the moment notice is announced. No one will come to work for the restaurant and those who have highly transferable skills will leave immediately."

The National Restaurant Association lobbied against the bill, but according to Ron Sarasin, director of government communications for the NRA, "When you try to explain to congressmen that many restaurants are unable to look two months

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85% of restaurants fail within the first five years.

into the future, the argument you get back is that the legislation will not affect restaurants. They don't think restaurants have that many employees."

But in major metropolitan areas like New York, there are at least 75 operations employing more than 100 personnel for 20 hours or more a week.

How can restaurant operators beat this bill? They can try to keep the number of employees under 100, but industry experts agree that if operators need 100 employees to operate efficiently, they would be penny-wise and pound-foolish to run

short staffed. If operators try to ignore the law, they could be forced to pay a fine and reimburse each employee for 60 days of wages.

A reasonable alternative to the bill considered acceptable to the industry would have been to let each company establish its own policy. "One of the reasons unions were formed was to address these issues in contract negotiations," says John Hinkle, vice president and lobbyist for the Kentucky Retail Federation. "Rather than negotiate something away for the privilege of plant closing, the unions decided to go for it in legislative form so they wouldn't have to waste a negotiating tool. That is a pattern we've seen emerging in quite a bit of legislation."

Some larger, multi-unit operators, such as Max Pine of Restaurant Associates in New York and Richard Melman of Lettuce Entertain You in Chicago, are less concerned about the effects of plant-closing legislation. Melman says he can incorporate many employees into another operation. Pine, while opposed to further government "meddling" into business, says he sees no

"It puts entrepreneurs at an extreme disadvantage. They risk capital and should be entitled to the best return or limited losses."

problem giving 60 days' notice.

Melman comments, "I would say four weeks would be more appropriate. And you might want to give more time to employees who have been with you for five years or more."

How this bill will actually affect operations remains to be seen because it has been so rare for a restaurant to actually plan its demise that far in advance. Like the closing of a Broadway play, it usually happens on the spur of the moment.

But the NRA's Sarasin says the law will make it more expensive to go into business: "The risks become greater and it becomes an added cost to doing business. The person who dreams of owning a restaurant will look at all the recent mandates and realize the risks are too great. A Ray Kroc of the future may never open."

"Plant closing is another step toward the Europeanization of the American work force, with all the rigidities and lack of incentives to create new jobs."

Weinstein comments, "It puts entrepreneurs at an extreme disadvantage. They risk capital and should be entitled to the best return or limited losses for taking that risk. This bill tells the entrepreneur, 'We don't want to limit your losses. You have to announce a closing.'"

—Jeff Weinstein

POSSIBLE LOOPHOLES

While they might create a litigation nightmare, two exceptions are built into the plant-closing bill. Shutdown can be ordered before the end of the 60-day notice period if, at the time notice would have been required, an operator could have avoided or postponed shutdown by actively seeking capital or business. Also, closing or layoffs could be ordered before 60 days expire if unforeseeable circumstances such as natural disaster and sudden, unexpected and dramatic changes in price or cost occur.

FAILURES AND STARTS DECLINE

In the first quarter of 1988, the number of eating- and drinking-place starts declined 7.7% and failures were down 4.3%. Those numbers should help soften the impact of the plant-closing bill.

Eating Place Failures

	1st Q, 1987	1st Q, 1988	% Change
New England	14	14	0.0%
Middle Atlantic	54	95	75.9
East North Central	136	117	-14.0
West North Central	41	45	9.8
South Atlantic	62	76	22.6
East South Central	29	43	48.3
West South Central	128	91	-27.8
Mountain	82	53	-35.4
Pacific	125	106	-15.2
Total	600	640	-4.3

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